CF0000080922

(9)

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Revision No. 15 /96

APPLICANT : Ghasiram,
(in Jail) S/o Dayaram,
aged about 30 years,
R/o Dariyapara,
Raigarh.

VERSUS

NON-APPLICANT : State of Madhya Pradesh

CRIMINAL REVISION UNDER SEC. 397, 401 Cr.P.C.

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Criminal Revisions No.15/96 and 14/96

O R D E R

Post for : 25-8-2001

Sd/-
R.S. Garg
Judge

24-8-2001.

Merchants
GA 24/8

Seen
Noted
Regd.

(12)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO.15/96

Ghasiram

vs.

State of M.P.(C.G.)

A N D

Criminal Revision No.14/96

Chandrabhan Singh

vs.

State of M.P. (C.G.)

O R D E R

Per Hon.R.S.Garg,J :

This judgment/order shall dispose of Criminal Revision No.15/96 (Ghasiram vs. State of MP(CG)) and Criminal Revision No.14/96(Chandrabhan Singh vs. State of MP(CG)), as both the revisions arise out of the same judgment.

2. Applicants Ghasiram and Chandrabhan Singh, being aggrieved by the judgment dated 20-12-1995 passed in Criminal Appeal No.22/95 and Criminal Appeal No.33/95 confirming the judgment dated 27-1-1995 passed in Criminal Case No.472/93 by the learned Judicial Magistrate First Class, Raigarh convicting each of the appellant under Sections 457 and 380 I.P.C., sentencing them to undergo R.I. for one year under each count and pay fine of Rs.500/- under each count, in default of payment of fine to undergo further imprisonment for one month for each default, the jail sentences to run concurrently, but however reducing the substantive jail sentences from one year to three months imprisonment,have filed these revisions.

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3. The prosecution case in brief was that the complainant Dinesh Kumar Ghosh who was residing in Masta Gali, Kotra Road, Raigarh alongwith his family had gone to Jashpur on 23-12-1992. On 29-12-1992, when he returned back to his house, he found that the outer door was closed but the inner door was broken. The suit-case, etc. were also broken and certain articles including ear-rings, bangles, kangan(gold kada), rings, neckless, silver payal, mangal-sutra, silver bangles, silver plate, glass, spoons and cash worth Rs.2400/- were stolen by somebody. According to the prosecution, the miscreants entered in the house from the gap between the wall and the roof. The complainant lodged the first information report on 29-12-1992. In the first information report itself, he expressed his serious doubts against the present applicants. After receiving the information, the police came into action, apprehended the accused persons. After recording the memorandums of the two accused persons, certain recoveries and discoveries were effected. From Chandrabhan Singh, cash, neckless, gold, bangles, kangan, chain, ear-rings, rings, mangal-sutra and a small silver box were recovered. From the accused Ghasiram, three silver chains, a small silver box, other silver articles, gold, rings, silver articles of the children and silver spoons were recovered. The said articles were put for identification which were rightly identified by P.W.1. After completing the investigation, the prosecution agency filed the challan before the trial court. As the accused persons pleaded not guilty, they were put to trial. After recording the evidence and hearing the parties, the trial court awarded the sentence of one year R.I. each under Sections 457 and 380 IPC and also imposed a fine of Rs.500/- under

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each count. In the appeal, the learned appellate Judge while maintaining the findings and conviction of the applicants, however, reduced the jail sentences to three months R.I.. Being aggrieved by the said judgment, conviction and sentences the applicants have come to this Court.

4. Shri Tripathi, learned counsel for the applicants, submits that as the memorandums and the recoveries have not been proved and as P.W.5 Mahendra Singh has not proved the memorandums recorded under Section 27 of the Evidence Act and the discoveries made in pursuance to the said memorandums, each of the applicant deserves to be acquitted. He further submits that as there are no witnesses to the incident, the applicants could not be held guilty under Section 457/380 IPC and even if the prosecution case is accepted in its entirety, they can, at best, be convicted under Section 411 I.P.C..

5. Shri Ashish Shukla, learned counsel for the State, on the other hand, submits that the memorandums Ex.P/2 and P/5 prepared on 30-12-1992 and 31-12-1992 have been proved and similarly the seizures effected under Ex.P/3 and P/4 have also been proved. He submits that even if there are no eye witnesses to the incident, as the accused persons were found in possession of the articles either on the very next day of the incident if 29th is taken to be the date of the incident or within one week if 23rd is taken to be the date of incident and as the recoveries are within a very short time of the alleged incident, the courts below were justified in holding that the accused persons committed the offence.

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6. The two courts have relied upon the statements of P.W.5 Mahendra Singh. Said Mahendra Singh has clearly stated that Chandrabhan made a statement before him that particular articles were burried by him near the mosque. He has also proved the recoveries/ discoveries at the instance of the accused Chandrabhan. Said Mahendra Singh has further proved that Ex.P/5 bears his signatures. Ex.P/5 is the document which records the statements of the accused. Mahendra Singh has further stated that under Ex.P/4, certain articles were seized at the instance of accused Ghasiram. The witness has further stated that Ex.P/4 bears his signatures. In the cross-examination, he however admitted that Ex.P/2 and P/3 were recorded in the police station but he further stated that as it was dark and there was no source of light near the mosque recovery memo could not be prepared near the mosque. He has further stated that when inquiries were made from Ghasiram, he had stated that certain silver articles were given by him to one Rikshawala and after some time the wife of that Rikshawala produced the said articles. From the statements of P.W.5 Mahendra Singh, it would clearly appear that the memorandums Ex.P/2 and P/5 were prepared by the police and in pursuance of these memorandums certain discoveries were made. True it is that the officerx who prepared the memorandums and effected the recoveries was not examined but his non-examination would not provide a foundation in favour of the accused persons because P.W.5 Mahendra Singh has proved the memorandum and the discoveries.

7. P.W.7 Kishore Kumar Ghosh had conducted the

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identification proceedings. He had clearly stated that he had mixed other articles with the articles in dispute and the witnesses had identified the said articles. His statements were condemned by the defenc mainly on two grounds, firstly that he did not know how to prepare a memorandum of identification and secondly that he was supplying some articles to the police. In the opinion of this Court, the grounds on which his statements are challenged are not valid. If somebody does not know how to prepare a particular form, if under the instructions of some Officer prepares the form and fills it correctly, then it cannot be held that he was working under the pressure of police. Similarly, simply because he was supplying certain material to the police would not make him unreliable. The two courts have appreciated the evidence in proper perspective and have recorded correct findings. Undisputedly, the articles were recovered on the next day of the report. It cannot be held that the accused persons were receivers of the stolen property. Accused Chandrabhan had burried the articles near the mosque while accused Ghasiram had pledged the articles with a third person. If they were the receivers of the stolen property, then they were not required either to burry the articles or pledge the same. The period between the date of theft and the recovery is very short and would justify the Court in presuming that the accused persons committed the theft.

8. After giving my anxious considerations to the arguments of the parties and the evidence brought on the record, I am unable to hold that the courts below were unjustified in convicting the accused persons.

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9. The applicants appear to be on bail. Their bail bonds are cancelled. They shall immediately surrender before the C.J.M. Raigarh for undergoing the sentence.

Sd/-
R.S. Garg
Judge

25-8-2001.

H/-
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